



Department of Health and Environment

Robert C. Harder, Secretary

Reply to: (913) 296-1609
FAX: (913) 296-1592

September 3, 1993

REC'd
8 SEP 93

Mr. Stephen M. Keiter
Facility Manager
Hydrocarbon Recyclers, Inc. of Wichita
2549 North New York
Wichita, Kansas 67219

Re: Scrap Metal Tank System
Hydrocarbon Recyclers, Inc. of Wichita
EPA I.D. Number KSD007246846

Dear Mr. Keiter:

I would like to thank you and your staff for providing me a tour of the referenced facility on August 24, 1993. The purpose was to familiarize myself with the facility operations prior to placing the draft permit for storage and treatment of hazardous waste on public notice.

Several items were discussed during the tour that require further attention. They are discussed below:

Change in Property Ownership

You indicated the facility property had been purchased by Hydrocarbon Recyclers, Inc. of Wichita (HRIW) from Charles and David Trombold sometime during the last six months. This will require the Part A in the Part B permit application to be amended to reflect the change in ownership of the property. Please include the Part A amendments with those requested in the August 13, 1993 KDHE letter.

Scrap Metal Tank System

You stated a tank system was constructed to decontaminate the old sparge unit equipment and associated piping prior to scrap metal recycling. The tank system is located in area D 400 of Building D. This area was the former old sparge room and has secondary containment. The tank system is comprised of a doubled walled tank (stainless steel insert within mild steel) which holds a caustic solution and a single walled mild steel tank for rinse water. It was agreed that the regulatory status of the tank system should be decided before proceeding with the public

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notice of the draft permit. It was HRIW's contention that the tank system was not subject to state/federal hazardous waste regulations due to the Hazardous Waste Debris Rule (HWDR). It was agreed that KDHE would investigate and render an interpretation on this matter even though the HWDR regulations have not yet been adopted by reference in the state hazardous waste program regulations.

We have reviewed the HWDR contained in the Federal Register (FR) dated August 18, 1992 specifically, Section V.C.7.b. on page 37237 which provides further clarification on this matter. Please find enclosed a copy for your information. It is our interpretation that the old sparge unit equipment and associated piping meet the definition of scrap metal and hazardous waste debris and if recycled, qualify for the exemption in 40 CFR 261.6(a)(3)(iv). This exemption also applies to scrap metal contaminated with listed hazardous waste. The tank system is processing an exempt on-site generated hazardous waste (i.e. scrap metal that is to be recycled) thus, we concur that it is not subject to state hazardous waste regulations. However, any residuals from the tank system would remain hazardous waste by the derived from rule and would require treatment to meet the standard for listed waste(s) before it could be land disposed. Residuals removed from the tank system would need to be managed in accordance with the requirements of K.A.R 28-31-4. This interpretation does not apply to the processing off-site generated hazardous waste debris.

Treatment of on-site generated hazardous waste debris not qualifying for the scrap metal recycling exemption would be subject to the provisions of 40 CFR 262.34 which exempts generators from permitting requirements. Please refer to the 57 FR 37194 Part II - Land Disposal Restrictions for Newly Listed Wastes and Hazardous waste Rule for interim status or hazardous waste permit requirements for treatment of off-site hazardous waste debris or on-site generated non-exempt hazardous waste debris over ninety (90) days. If you have further questions, please contact me at the above number.

Sincerely,



Steve Broslavick, P.E.
Hazardous Waste Section
Bureau of Waste Management

Enclosure

c: Wes Bartley - EPA ✓
SCDO - BODO/waste programs

practicable and it is to be disposed, today's rule requires treatment by an immobilization technology to reduce the likelihood of migration of hazardous contaminants, followed by disposal in a subtitle C facility. In response to commenters' concerns about the need for size reduction for immobilization, we note that the treatment standards for macroencapsulation and sealing may be achieved in some cases without size reductions.⁴³

A number of commenters questioned whether any treatment was needed to be performed on inherently hazardous debris or whether it could simply be disposed directly. The statute forecloses that option. Section 3004(m)(1) indicates that the Agency is to establish "levels or methods of treatment, if any" which substantially reduce waste toxicity and mobility and minimize threats. If there are not such methods, the situation EPA believes contemplated by the clause "if any" in section 3004(m), the waste cannot be land disposed. See section 3004 (d), (e), and (g); see also *API v. EPA*, 906 F. 2d 729, 738 (D.C. Cir. 1990) (use of comparative risk assessment to compare safety of treatment methods versus land disposal of untreated wastes is unnecessary given that the statute forecloses land disposal as an option). Thus, some treatment of inherently hazardous debris is needed in order for it to be land disposed. As indicated above, the Agency believes that such methods exist (i.e., immobilization).

If inherently hazardous debris is also contaminated with listed wastes, then that waste also must be treated by one of the prescribed treatment methods, the same approach adopted for all other debris. Note that the contaminants in the waste contaminating the debris need not be treated prior to immobilization of the debris if the performance standards for the immobilization technology can be achieved without such prior treatment.

Residues from treating inherently hazardous debris would not require further treatment unless the residues also exhibited a prohibited hazardous waste characteristic. However, if the inherently hazardous debris is contaminated with a listed waste, residues from treating the debris would remain subject to the numerical standards applicable to that listed waste. Furthermore, if the debris were treated first to remove or destroy the listed waste (i.e., treated by an extraction or destruction technology

prescribed in today's rule) and subsequently treated again by immobilization due to its inherent content, the Agency would not consider the debris to be contaminated any longer with a listed waste, since the initial treatment would have removed or destroyed it. Thus, any residues from subsequent immobilization would not be subject to treatment standards unless those residues exhibited a characteristic. For example, if lead pipe contaminated with listed solvents was first treated to remove the solvent and then treated to immobilize the lead, only residues from removing the solvent would have to meet the numerical solvent treatment standards. This approach mirrors that adopted for all other hazardous debris.

b. Inherently Hazardous Debris that Is Scrap Metal and Is Recycled. EPA's rules provide for an exemption from regulation for scrap metal that is recycled. See § 261.6(a)(3)(iv); scrap metal is defined at § 261.1(c)(6). EPA consequently indicated at proposal that the land disposal prohibitions would not apply to inherently hazardous debris that was also scrap metal being recycled. EPA adheres to that approach, which simply restates current rules (and was not reopened for reconsideration). The only obligation for generators handling such scrap metal is to keep a record of the scrap and its subsequent disposition or recycling by metal reclamation. See § 268.7(a)(6). If the scrap metal is also contaminated with listed waste, the exemption continues to apply since the material would still meet the regulatory definition of scrap metal. However, any residues from processing the waste would remain hazardous by the derived from rule, and would require treatment to meet the standard for that listed waste before it could be land disposed. Thus, persons treating such scrap metal would become hazardous waste generators, and would also incur responsibilities under the land disposal restriction rules (see § 268.7(a) (1) and (2)). As explained in the previous section, however, if the scrap metal were to be treated first by a prescribed removal or destruction technology, it would no longer be considered to be contaminated with a listed waste, and any residues generated subsequently would not be hazardous wastes unless they exhibited a hazardous waste characteristic. Thus, it may be advantageous to arrange for pretreatment of contaminants before this type of scrap metal is recycled.

c. Status of Stainless Steel Debris. The Agency provided an example in the proposed rule of demolition of a building

containing stainless steel fixtures and indicated that if a representative sample of the demolition debris exhibited a characteristic debris would be hazardous waste. The Agency noted that stainless steel could also be removed before demolition and managed separately, perhaps by recycling it as scrap metal. See 57 FR 990.

In providing this example, the Agency was not stating that discarded stainless steel artifacts are hazardous wastes, and in fact has no information indicating that such materials, much less demolition debris containing small bits of stainless steel, would exhibit a characteristic. Although it may be worthwhile (for environmental and economic reasons) to remove metal artifacts for recycling rather than destroying them when demolition occurs, today's rule does not mandate any such conduct.

8. Relationship of the TSCA PCB Rules to Today's Rule

As proposed, the final rule requires that hazardous debris that is also a waste PCB under 40 CFR part 761 must comply with both the applicable PCB requirements and today's debris treatment standards, by satisfying the more stringent applicable requirements.

The treatment standards for hazardous debris also apply to debris contaminated with both PCBs and RCRA hazardous wastes. See § 268.45(a)(5). This is consistent with the approach taken in the third final rule. See 55 FR 22678 (June 1, 1990). Debris treated to today's performance standards by an extraction or destruction technology (and that does not exhibit a hazardous characteristic) remains subject only to TSCA rules because it is excluded from subtitle C regulation, whereas debris treated by an immobilization technology remains subject to applicable requirements under both statutes.

Under the Toxic Substances Control Act (TSCA), disposal of debris contaminated with PCBs is regulated under 40 CFR 761.60. In addition, disposal of debris and materials resulting from the cleanup of certain PCB spills is subject to the PCB Spill Cleanup Policy, as provided under 40 CFR 761.125.

9. Relationship of Existing Agency Standards for Asbestos to Today's Rule

As proposed, the Agency is today requiring that the treatment standards for hazardous debris also apply to debris subject to standards for asbestos

⁴³ Certainly, size reduction to that normally achieved prior to microencapsulation is not necessary.